IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

CRP.No. 1876 of 2002

(I.A..5002 /2001 IN I.A.4622/01 IN OS.2534/1998 of II ADDL.MUNSIFF.S COURT, THRISSUR)

REVN. PETITIONER: PETITIONER/PETITIONER/RESPONDENT/PLAINTIFF

K.K.SIDHARTHAN, S/O.
KOKKARNICKAL KUNJAPPAN, PULLU VILLAGE,
THRISSUR TALUK AND DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS: RESPONDENT/PETITIONER/3RD DEFENDANT

C.V.JOSE, S/O.CHERUVATHOOR VAREED,
IRIMBRANELLUR AMSAM & DESAM,
VENKITANG VILLAGE, CHAVAKKAD TALUK,
TRICHUR DISTRICT.

BY ADV. SRI.O.D.SIVADAS

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 1876 OF 2002

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Dated this the 13th December, 2007

O R D E R

The plaintiff in O.S.No. 2534 of 1998 on the file of the court of the Addl. Munsiff, Thrissur has filed this Civil Revision Petition, challenging the order dated 5th July, 2002 on I.A.No. 5002 of 2001 in I.A.No. 4622 of 2001.

2. The suit was filed by the revision petitioner against the respondent/3rd defendant and two others for cancellation of three assignment deeds. He valued the suit at Rs. 67,000/-, the amount being the total value shown in the three documents. Court fee was paid accordingly. The respondent/3rd defendant did not raise a contention that the valuation of the suit was not proper . However, he filed an additional written statement in which the question of improper valuation was raised. The question was not decided by the court below. The suit was listed trial. The plaintiff was examined as P.W.1. In his evidence he stated about the value per cent of the land in prevalence at that time. The third defendant filed I.A.No. 4622 of 2001 to consider the question of valuation and court fee. The court below passed an order dated 19th July, 2001 holding that the valuation of the suit was not proper. It was held that the suit should have been valued on the market value of the immovable property and certainly it would be more than Rs. One lakh, going by the answers given by P.W.1 in his evidence. The court below directed that the plaint shall be presented before the proper court.

3. Subsequently, the trial court suo motu reviewed the order passed in I.A.No.

4622 of 2001 and the plaintiff was directed to file a petition for amendment of the plaint showing the correct valuation. The plaintiff filed I.A.No.5002 of 2001 to review the order passed in I.A.No. 4622 of 2001. The court below , by the order impugned in this Revision, dismissed that application.

4. Learned counsel for the petitioner submits that the legal requirement is that the plaintiff should value the suit on the basis of the market value of the property. The market value is to be computed as provided in Section 7 of the Kerala Court Fees and Suits Valuation Act. The petitioner contends that the court below was not justified in embarking upon an enquiry in the original order as well as in the order in the Review Petition as what would be the market value of the property and in directing the plaintiff to show the valuation accordingly and to pay the court fee thereon. When the plaintiff was directed to amend the plaint in accordance with law and to show the correct value, it was for the plaintiff to file an application for amendment and to show the value in accordance with law. It was then only the court below could arrive at a conclusion as to whether the valuation so made was proper or not. In the order passed in the Review Petition, the court below need not have considered the question as to the exact value of the property or the market value of the property . It must be left to the plaintiff to value the property in accordance with law. Why the plaintiff has not filed an application for amendment is not clear. Probably before anything could be done, the Civil Revision Petition was filed by the plaintiff.

5. In the facts and circumstances of the case, I am of the view that the order dated 5th July 2002 is liable to be set aside. At the same time, the order in I.A.No. 4622 of 2001 directing the plaintiff to show the proper value in the plaint and to file an application for amendment of the plaint is confirmed.

In accordance with the direction to value the suit properly and to file an application for amendment of the plaint, the plaintiff shall immediately file an application for amendment of the plaint and it shall be done on or before 10.01.2008 with copy to the defendant. All the contentions of the parties are left open. What is being confirmed as per this order is only the order in I.A.No.4622 of 2001 to the extent of holding that the valuation as made in the plaint at present is not proper and directing the plaintiff to file an application to amend the plaint showing the correct valuation. The order dated 5th July 2002 in I.A. No. 5002 of 2001 is set aside.

The Civil Revision Petition is disposed of as above. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 1876 of 2002

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Dated this the 13th December, 2007

O R D E R